

JAY W. EISENHOFER (*admitted pro hac vice*)
MICHAEL J. BARRY (*admitted pro hac vice*)
GRANT & EISENHOFER P.A.
Chase Manhattan Centre
1201 N. Market Street
Wilmington, Delaware 19801
Telephone: (302) 622-7000
Facsimile: (302) 622-7100
E-Mail: jeisenhofer@gelaw.com
mbarry@gelaw.com

****E-Filed 4/8/2010****

Attorneys for Plaintiffs

GEORGE A. RILEY (S.B. #118304)
O'MELVENY & MYERS LLP
Two Embarcadero Center
28th Floor
San Francisco, California 94111
Telephone: (415) 984-8700
Facsimile: (415) 984-8701
E-Mail: griley@omm.com

Attorneys for Defendant
APPLE INC.

(additional counsel listed on signature page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARTIN VOGEL and KENNETH
MAHONEY, on Behalf of Themselves
and All Others Similarly Situated,

Plaintiffs,

v.

STEVEN P. JOBS, PETER OPPENHEIMER,
FRED ANDERSON, WILLIAM V.
CAMPBELL, MILLARD S. DREXLER,
ALBERT GORE, JR., ARTHUR D.
LEVINSON, JEROME P. YORK and
APPLE COMPUTER, INC.,

Defendants.

(caption continued on following page)

Case No. C06-05208-JF

STIPULATION AND ~~[PROPOSED]~~
ORDER REGARDING SCHEDULING
AND RELATED MATTERS

Department: Ctrm 3, 5th Floor
Judge: Honorable Jeremy Fogel

1 MARTIN VOGEL and KENNETH
2 MAHONEY, on Behalf of Themselves
and All Others Similarly Situated,

3 Plaintiffs,

4 v.

5 APPLE, INC., STEVEN P. JOBS, FRED
6 ANDERSON, NANCY HEINEN, WILLIAM
7 V. CAMPBELL, MILLARD S. DREXLER,
ARTHUR D. LEVINSON, and JEROME P.
YORK

8 Defendants.

Case No. C08-03123-JF

1 WHEREAS, on August 24, 2006, plaintiffs Vogel and Mahoney filed a class action
2 complaint in this Court alleging that certain defendants violated the Securities Exchange Act of
3 1934 (the “Exchange Act”), including § 10(b) and Rule 10b-5 thereunder, and § 20(a). That
4 action is styled as *Martin Vogel and Kenneth Mahoney v. Steven Jobs, et al.*, Case No. 5:06-cv-
5 05208-JF (N.D. Cal.) (“*Vogel I*”);

6 WHEREAS, on January 19, 2007, this Court appointed the New York City Employees’
7 Retirement System (“NYCERS”) as Lead Plaintiff in *Vogel I* and Grant & Eisenhofer P.A. as
8 Lead Counsel in *Vogel I*;

9 WHEREAS, on March 23, 2007, NYCERS filed, as Lead Plaintiff, the Consolidated
10 Complaint and asserted claims under §§ 14(a) and 20(a) of the Exchange Act and for the alleged
11 breach of the common law duty of disclosure. The Consolidated Complaint did not assert any
12 claims for alleged violations of §10(b) of the Exchange Act or Rule 10b-5 thereunder;

13 WHEREAS, on November 14, 2007, this Court granted the defendants’ motion to dismiss
14 the Consolidated Complaint (“Dismissal Order”);

15 WHEREAS, on December 14, 2007, NYCERS filed a motion for leave to file a First
16 Amended Consolidated Class Action Complaint to assert claims for alleged violations of § 10(b)
17 of the Exchange Act and Rule 10b-5 thereunder;

18 WHEREAS, on May 14, 2008, this Court denied NYCERS’s motion for leave to file a
19 First Amended Consolidated Class Action Complaint (“Denial Order”);

20 WHEREAS, on June 12, 2008, this Court entered Judgment for the defendants
21 (“Judgment”);

22 WHEREAS, on June 17, 2008, NYCERS filed its Notice of Appeal of the Dismissal
23 Order, the Denial Order, and the Judgment (“NYCERS’s Appeal”);

24 WHEREAS, on June 27, 2008, plaintiffs Vogel and Mahoney filed a new class action
25 complaint in this Court alleging that certain defendants violated the Exchange Act, including
26 § 10(b) and Rule 10b-5 thereunder, and § 20(a). That action is styled *Martin Vogel and Kenneth*
27 *Mahoney v. Apple Inc., et al.*, Case No. 5:08-cv-03123-JF (N.D. Cal.) (“*Vogel II*”);
28

WHEREAS, pursuant to the parties' stipulation, on July 22, 2008, this Court entered an Order staying *Vogel II* pending resolution of NYCERS's Appeal;

WHEREAS, on January 28, 2010, the Ninth Circuit Court of Appeals issued a ruling in NYCERS's Appeal affirming the Dismissal Order and reversing the Denial Order;

WHEREAS, on February 19, 2010, the Ninth Circuit issued a mandate in NYCERS's Appeal;

WHEREAS, on March 22, 2010, NYCERS filed a First Amended Consolidated Class Action Complaint in *Vogel I* captioned *In Re Apple Inc. PSLRA Backdating Litigation* ("First Amended Complaint");

WHEREAS, the Court has scheduled a Case Management Conference in *Vogel I* on April 30, 2010, at 10:30 a.m.;

WHEREAS, the Court has scheduled a Case Management Conference in *Vogel II* on April 9, 2010, at 10:30 a.m.;

WHEREAS, the parties believe that *Vogel I* and *Vogel II* concern substantially the same parties, transactions or events and involve common questions of law or fact, and should be deemed related pursuant to Civil Local Rule 3-12 and consolidated pursuant to Rule 42 of the Federal Rules of Civil Procedure to avoid unnecessary cost or delay;

NOW, THEREFORE, THE PARTIES STIPULATE, AND THE COURT HEREBY ORDERS, THAT:

1. *Vogel I* and *Vogel II* shall be deemed related pursuant to Civil Local Rule 3-12 and *Vogel II* shall be consolidated with *Vogel I* pursuant to Rule 42 of the Federal Rules of Civil Procedure and 15 U.S.C. § 78u-4(a)(3)(B). NYCERS shall be Lead Plaintiff and Grant & Eisenhofer P.A. shall be Lead Counsel with respect to the consolidated action.

2. The docket in *Vogel I* (Case No. 5:06-cv-05208-JF) shall constitute the Master Docket for this proceeding.

//

//

//

Plaintiffs' Oppositions Due: July 27, 2010
Defendants' Replies Due: August 17, 2010
Hearing: To be set by the Court.

10. Defendants shall not be required to file any responsive pleading to the pending complaint in *Vogel II*.

IT IS SO STIPULATED.

Dated: April 7, 2010

GEORGE A. RILEY
O'MELVENY & MYERS LLP

By: /s/ George A. Riley
George A. Riley

Attorneys for Defendant
APPLE INC.

Dated: April 7, 2010

DOUGLAS R. YOUNG (S.B. #73248)
FARELLA BRAUN & MARTEL LLP
Russ Building
235 Montgomery Street, 17th floor
San Francisco, CA 94104
Telephone: (415) 954-4400
Facsimile: (415) 954-4480
E-Mail: dyoung@fbm.com

By: /s/ Douglas R. Young
Douglas R. Young

Attorneys for Defendants
STEVEN P. JOBS, WILLIAM V.
CAMPBELL, MILLARD S. DREXLER,
ARTHUR D. LEVINSON and JEROME B.
YORK

1 Dated: April 7, 2010

JEROME C. ROTH (S.B. #159483)
YOHANCE C. EDWARDS (S.B. #237244)
MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
Telephone: (415) 512-4000
Facsimile: (415) 512-4077
E-Mail: Jerome.Roth@mto.com
Yohance.Edwards@mto.com

2
3
4
5
6 By: /s/ Yohance C. Edwards
Yohance C. Edwards

7
8 Attorneys for Defendants
9 FRED D. ANDERSON and NANCY R.
10 HEINEN

11 Dated: April 7, 2010

JAY W. EISENHOFER (*admitted pro hac vice*)
MICHAEL J. BARRY (*admitted pro hac vice*)
GRANT & EISENHOFER P.A.
Chase Manhattan Centre
1201 N. Market Street
Wilmington, Delaware 19801
Telephone: (302) 622-7000
Facsimile: (302) 622-7100
E-Mail: jeisenhofer@gelaw.com
mbarry@gelaw.com

12
13
14
15
16 By: /s/ Michael J. Barry
Michael J. Barry

17
18
19 MERRILL GLEN EMERICK (SB# 117248)
ANDERLINI & EMERICK LLP
411 Borel Avenue, Suite 501
San Mateo, California 94402
20 Telephone: (650) 242-4884
21 Facsimile: (650) 212-0081

22 Attorneys for Lead Plaintiff
23 THE NEW YORK CITY EMPLOYEES'
24 RETIREMENT SYSTEM
25
26
27
28

1 Dated: April 7, 2010

PATRICE L. BISHOP (S.B. #182256)
STULL, STULL & BRODY
10940 Wilshire Boulevard, Suite 2300
Los Angeles, California 90024
Telephone: (310) 209-2468
Facsimile: (310) 209-2087
E-Mail: service@ssbla.com

By: /s/ Patrice L. Bishop
Patrice L. Bishop

Howard T. Longman
STULL, STULL & BRODY
6 East 45th Street
New York, NY 10017
Telephone: (212) 687-7230
Facsimile: (212) 490-2022

Gary S. Graifman
KANTROWITZ, GOLDBAMER &
GRAIFMAN
747 Chestnut Ridge Road
Chestnut Ridge, New York 10977
Telephone: (845) 356-2570
Facsimile: (845) 356-4335

Attorneys for Plaintiffs
MARTIN VOGEL and KENNETH
MAHONEY

17 I, George A. Riley, am the ECF User whose ID and password are being used to file this
18 Stipulation and [Proposed] Order Regarding Scheduling and Related Matters. In compliance with
19 General Order 45, X.B., I hereby attest that Douglas R. Young, Yohance C. Edwards, Michael J.
20 Barry, and Patrice L. Bishop have concurred in this filing.

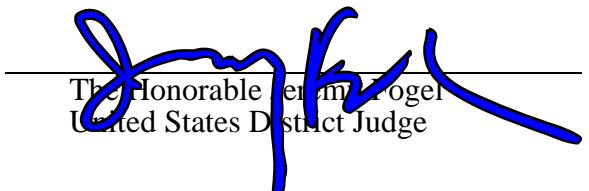
By: /s/ George A. Riley
George A. Riley

ORDER

PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.

26 DATED: April 8, 2010

MP1:1191444.3


The Honorable Martin Vogel
United States District Judge